



26 SEP 2006

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In re Application of GAO et al	:	
U.S. Application No.: 10/533,208	:	
PCT Application No.: PCT/US03/34207	:	
Int. Filing Date: 28 October 2003	:	DECISION
Priority Date Claimed: 28 October 2002	:	
Attorney Docket No.: INV850/4-11US/55006	:	
For: ARRAY OLIGOMER SYNTHESIS AND	:	
USE	:	

This is in response to applicant's "Petition Under CFR §1.47" filed 21 April 2006.

BACKGROUND

On 28 October 2003, applicant filed international application PCT/US03/34207, which claimed priority of an earlier United States application filed 28 October 2002. The thirty-month period for paying the basic national fee in the United States expired on 28 April 2005.

On 28 April 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 21 October 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 21 April 2006, applicant filed the present petition under 37 CFR 1.47(a).

On 12 July 2006, this Office mailed a decision dismissing the 21 April 2006 petition.

On 15 September 2006, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909).

On 18 September 2006, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Petitioner has previously satisfied items (1) and (3) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted which fully describes the exact facts which are relied on to establish that a diligent effort was made. . . . The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

* * *

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

Inventor Qimin You

Petitioner has previously established that inventor You refuses to join in the application.

Inventor Shi-Ying Cai

The renewed petition adequately demonstrates that a diligent effort was made to locate inventor Cai. Attempts to reach inventor Cai were made by postal mail, by searching directories, and by contacting Cai's former co-workers (see statements of Margaret Sampson and Bobbie Melder.) Thus, it can be concluded with reasonable certainty that inventor Cai cannot be found.

With regard to item (4) above, the petition states the last known addresses of the nonsigning inventors.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is GRANTED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 15 September 2006 is hereby VACATED.

The application has an International Filing Date under 35 U.S.C. 363 of 28 October 2003, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 21 April 2006.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventors at the last known addresses of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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In re Application of GAO et al
U.S. Application No.: 10/533,208
PCT Application No.: PCT/US03/34207
Int. Filing Date: 28 October 2003
Priority Date Claimed: 28 October 2002
For: ARRAY OLIGOMER SYNTHESIS AND USE

Dear Qimin You:

You are named as a joint inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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PCT Application No.: PCT/US03/34207
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Dear Shi-Ying Cai:

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As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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